



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,854	01/16/2002	Lawrence D. Bergman	YOR920010076US1	5107

7590 09/23/2004
Robert P. Tassinari, Jr.
Intellectual Property Law Dept.
IBM Corporation
P.O. Box 218
Yorktown Heights, NY 10598

EXAMINER

MILLER, CRAIG S

ART UNIT	PAPER NUMBER
----------	--------------

2857

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/047,854	Applicant(s) BERGMAN ET AL.	
	Examiner Craig Miller	Art Unit 2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election of invention II in the paper filed 03 August 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse.
2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code on pages 2 and 13 of the specification. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP §608.01.
3. The attempt to incorporate subject matter into this application by reference to a hyperlink on pages 2 and 13 of the specification is improper because the data linked to is not necessarily static and cannot be relied upon to remain in an unchanged state.

The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. In re Hawkins, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); In re Hawkins, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); In re Hawkins, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

Reliance on a commonly assigned copending application by a different inventor may ordinarily be made for the purpose of completing the disclosure. See In re Fried, 329 F.2d 323, 141 USPQ 27 (CCPA 1964), and General Electric Co. v. Brenner, 407 F.2d 1258, 159 USPQ 335 (D.C. Cir. 1968).

Since a disclosure must be complete as of the filing date, subsequent publications or subsequently filed applications cannot be relied on to establish a constructive reduction to practice or an enabling disclosure as of the filing date. White Consol. Indus., Inc. v. Vega Servo-Control, Inc., 713 F.2d 788, 218 USPQ 961 (Fed. Cir. 1983); In re Scarbrough, 500 F.2d 560, 182 USPQ 298 (CCPA 1974); In re Glass, 492 F.2d 1228, 181 USPQ 31 (CCPA 1974).

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

5. Claims 3, 4 and 6-8 are rejected under 35 U.S.C. 103 as being unpatentable over Hoff *et al.* (6,577,976 B1) in view of Canada *et al.* (5,854,994).

Hoff *et al.* discloses a plurality of sensors [208], a data summarizer [212] and a system model (abstract) which is updated [206]. Hoff *et al.* does not specify that the data transmissions should have an optimized schedule. Canada *et al.* discloses that wireless sensors should have dynamic data transmission schedules (middle of column 3). Because the disclosures of Hoff *et al.* and Canada *et al.* are within the art of sensor monitoring, because Canada *et al.* discloses that one should dynamically schedule data transmission times, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hoff *et al.* the recommended data transmission scheduling as suggested by Canada *et al.*, so as to receive the expected benefits derived there from such as enhanced system flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

More particularly with respect to claims 6 and 8, said claims are directed towards identifying an uncertainty estimate. Hoff discloses such identification in column 3, lines 35+.

6. Claim 5 is rejected under 35 U.S.C. 103 as being unpatentable over Hoff *et al.* in view of Canada *et al.* as applied to claim 3 above and further in view of Barna *et al.* (5,864,773).

Claim 5 includes data fusion using one of several known data analysis schemes. Hoff *et al.* does not specify any such scheme of data fusion. Barna *et al.* discloses such data fusion including data interpolation (beginning at the top of col. 3). Because the disclosures of Hoff *et al.* and Barna *et al.* are within the art of sensor monitoring, because Barna *et al.* discloses that one should fuse data through interpolation, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hoff *et al.* as modified above the recommended data fusion as suggested by Barna *et al.*, so as to receive the expected benefits derived there from such as enhanced system accuracy absent a showing of unexpected results or synergistic results from any particular claimed combination.

Serial No. 10/047,854
Tech. Center 2857

-4-

7. The prior art made of record but not relied upon is deemed pertinent to applicant's disclosure.

Mintz (5,532,702) discloses remote station data transmission prioritizing.

Partyka (6,058,137) discloses sensors having independent transmission schedule.

Ragle *et al.* (6,195,018 B1) discloses multiple sensors occasionally transmitting to a base station.

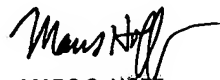
Tovinkere *et al.* (US 2004/0102921 A1) discloses updating system models.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Craig Steven Miller whose telephone number is (571) 272-2219. Central facsimile services are now available at (703) 872-9306.

The Examiner can normally be reached on Mondays through Thursdays from 6:30am-2:00pm EDT. Should repeated attempts to reach the Examiner be unsuccessful, the Examiner's Supervisor, Marc Hoff may be reached at (571) 272-2216.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2800.

Craig Steven Miller (ss)
13 September 2004


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800